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ABSTRACT

This handbook was designed to help school counselors and other personnel, parents, and students to understand the rights and responsibilities of pupils and counselors in the area of shared information. It explains the requirements of several recent California laws dealing with confidentiality in counseling. Situations where the new laws would apply are outlined, and several possible exceptions are noted. The importance of informing parents, students, and staff members is stressed, and a pupil/student confidentiality quiz with answers is included. Compliance with the new laws is illustrated through several hypothetical case studies. The handbook provides a definition section for relevant terms and discusses ethical issues in confidentiality. (JAC)

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# A Handbook Regarding Confidentiality as a Right of Pupils in Counselor-Pupil Exchanges

As Outlined in
California Education Code
Section 35301 (Age Twelve and Older) and
Section 72621 (Community Colleges)
Pursuant to
Chapter 1152, Statutes 1981 (AB 428)

Lee Sheldon
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Dan Nasman
Ron Quast
Jim Saum
Margaret Anaya Tan

U.S. DEPARTMENT OF EDUCATION
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Ron Quast, Counselor, Grossmont High School; and Past President, California School Counselors Association

Jim Saum, Professor of Counselor Education, California State University, Sacramento

Margaret Anaya Tan, Staff Counsel, Legal Office, State Department of Education

# Preface

Historically, California educators have been sensitive to the need to allow some privacy to young people in certain areas of personal concern. The writers of this handbook have sought to present a balanced perspective in terms of what a parent has a right to know and what the young person has a right to withhold from the parent or other responsible adult. The recent passage of legislation that addresses this sensitivity now tips in favor of the pupil under certain circumstances where the pupil's relationship with a person employed and credentialed as a school counselor is concerned.

This handbook, developed by the Department of Education's Personal and Career Development Services Unit, was designed to help school counselors, other school personnel, parents, and pupils to better understand the rights and responsibilities of pupils and counselors in this important area of shared information.

Recent laws have been enacted to protect the young person's right to determine whether he or she wishes certain information that he or she has discussed with a school counselor to be shared with anyone else. The extent to which that privilege enhances the relationship between the counselor and the pupil will depend on the trust and cooperation developed among all persons who affect the life of the individual pupil.

In the 1980 session of the California Legislature, Assemblyman Gary Hart introduced a bill (AB 763) to give pupils twelve years of age and older the right of limited confidentiality in their communication with school counselors. California school counselors had, on a number of previous occasions, sought such a right for pupils; however, opposition from other sources prevented successful passage, despite at least half of the states in the nation having passed such legislation.

Assembly Bill 763 was passed (Chapter 401, Statutes 1980) by the Legislature and signed by Governor Jerry Brown on July 10, 1980; it became effective on January 1, 1981. During the 1981 session of the State Legislature, Assemblyman Hart introduced AB 428 (Chapter 1152, Statutes 1981) to amend certain aspects of AB 763 (1980). This bill became effective January 1, 1982, thus overcoming certain problems encountered in the implementation of the initial legislation. The successful passage of these bills could be attributed to the following:

1. The Open Road staff of the Citizens' Policy Center produced in 1979 a report on the guidance system in California secondary schools entitled, *Lost in the Shuffle*. One of the conclusions of that report stated that ". . . many students say that the lack of confidentiality in their relationship with guidance and school staff prevents them from seeking help when they most need it." (p. 41) The report recommended the development of legislation which would ensure appropriate confidentiality in counselor-pupil exchanges.
2. Members of the Open Road staff and some involved students met with the California State Assembly Subcommittee on Education Reform to express their concern about the need for confidentiality as a right of pupils. As a result of that hearing, Assemblyman Hart in 1979 formed the Statewide Task Force on School Counseling. The task force was made up of school counselors, guidance program administrators, parents, teachers, students, a school board member, and a counselor educator. Among other recommendations, the task force requested that legislation be enacted that would guarantee limited confidentiality as a right of pupils in their communication with certified school counselors, school psychologists, school social workers, and school nurses in the course of guidance-related functions.
3. Legislators were contacted by individual counselors and other members of the state guidance associations.

4. Significant positive testimony was given before the Senate Education Committee by a pupil, a parent, and a school counselor.

Credentialed school counselors now are able to guarantee, within the law, limited confidentiality as a right for their counselees. However, as with any new legislation, pupils and counselors need to be informed of their rights and responsibilities. That is the intent of this document.

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*Program Administrator, Personal and Career Development Services*

# Applications and Exceptions

The laws and regulations that are the subject of this handbook were established for the protection of the following:

1. The pupil who is twelve years of age or older
2. The parent or guardian of a pupil who is twelve years of age or older

The laws and regulations apply to, but are not limited to, the following:

1. The information disclosed while the pupil was officially enrolled in a California public school or community college
2. The information disclosed which is of a confidential and personal nature
3. The counselor who is credentialed *and employed* as a school counselor
4. The counselor who as a result of the exchange with a pupil has reasonable cause to believe that disclosure to the parents would result in clear and present danger to the health, safety, or welfare of the pupil[1]

In particular circumstances exceptions to the laws and regulations pertaining to confidentiality may be made. The information discussed during counseling may be revealed, released, discussed, or referred to under the following conditions:

1. In discussions with a licensed physician, psychiatrist, clinical psychologist, school psychologist, other health care provider, or the school nurse when the purpose is to refer the pupil for treatment
2. In the process of reporting a case of child abuse or suspected child abuse (which includes molestation or neglect) [Penal Code Section 11165 as amended by Chapter 29, Statutes 1981 (SB 322; see appendix)]
3. In reporting information to the school principal or parents of the pupil when the counselor has reasonable cause to believe that disclosure is necessary to avoid a clear and present danger to the health, safety, or welfare of the pupil or other persons within the school community (administrators, teachers, parents,[2] pupils, or other school staff members)
4. In the process of reporting information to the principal, other persons inside the school (as necessary), the parents of the pupil, and other persons outside the school, when the pupil indicates that a crime, involving the likelihood of personal injury or significant or substantial property losses, will be or has been committed
5. In reporting information to one or more persons specified in a written waiver after this written waiver of confidence has been read and signed by the pupil and preserved in the pupil's file maintained by the counselor[3]
6. When ordered to do so by a court of law (to aid in the investigation of a crime) or when ordered to do so in an administrative or judicial hearing

A graphic presentation of the exceptions to the laws and regulations pertaining to pupil/counselor confidentiality is shown on the following page.

---

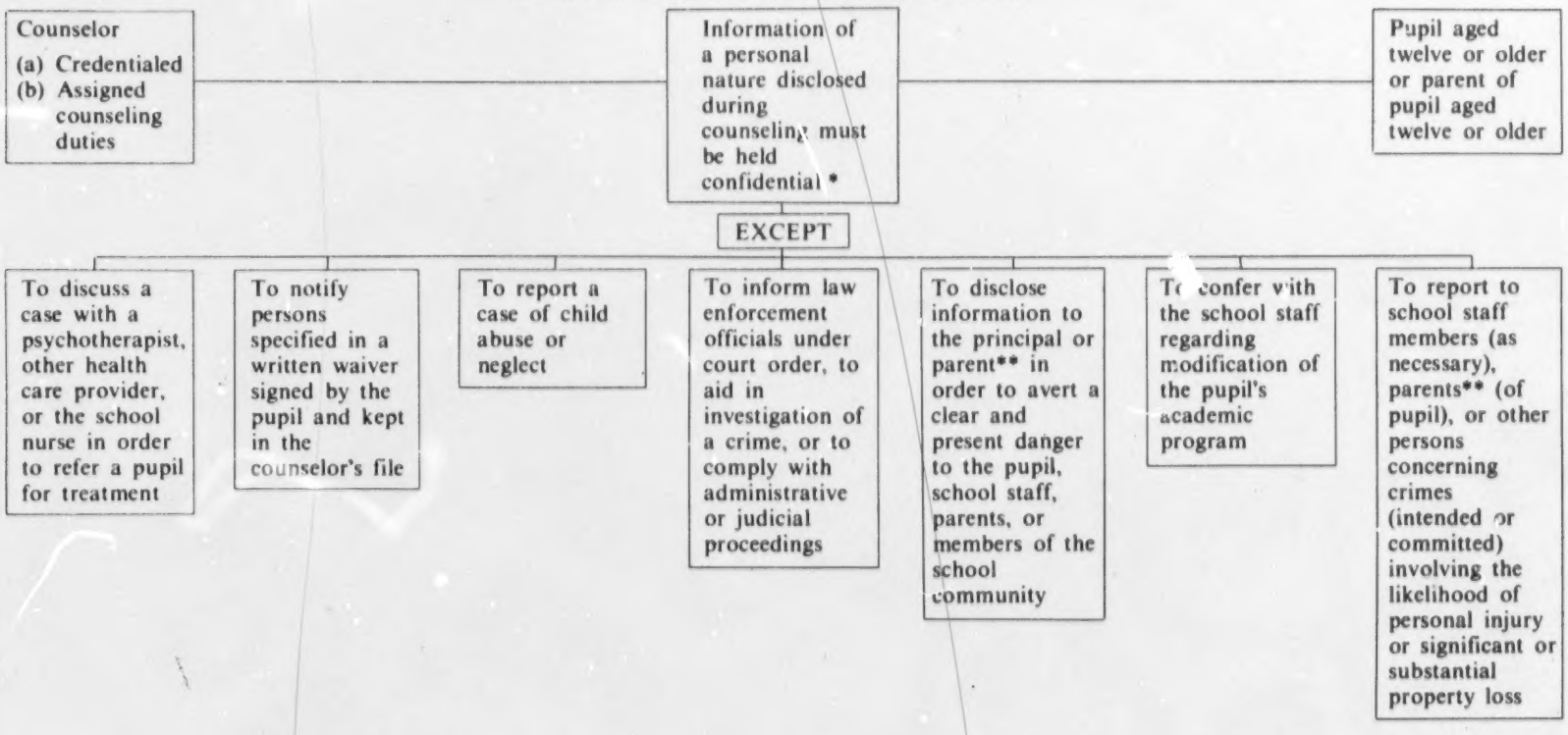
[1]The confidentiality privilege on behalf of the parent would apply if it was the parent who confided the type of information which could be labeled "child abuse." This occurs because of the criminal nature of such conduct; however, certain ethical questions must be considered.

[2]Unless the parent is the source of said danger.

[3]*NOT* the pupil record.

# Pupil/Counselor Confidentiality

**As Specified in Education Code Section 35301**


Counselor
(a) Credentialed
(b) Assigned counseling duties
Information of a personal nature disclosed during counseling must be held confidential *
Pupil aged twelve or older or parent of pupil aged twelve or older
EXCEPT
To discuss a case with a psychotherapist, other health care provider, or the school nurse in order to refer a pupil for treatment
To notify persons specified in a written waiver signed by the pupil and kept in the counselor's file
To report a case of child abuse or neglect
To inform law enforcement officials under court order, to aid in investigation of a crime, or to comply with administrative or judicial proceedings
To disclose information to the principal or parent** in order to avert a clear and present danger to the pupil, school staff, parents, or members of the school community
To confer with the school staff regarding modification of the pupil's academic program
To report to school staff members (as necessary), parents** (of pupil), or other persons concerning crimes (intended or committed) involving the likelihood of personal injury or significant or substantial property loss

*Education Code Section 35301:* Any information of a personal nature disclosed by a pupil twelve years of age or older in the process of receiving counseling from a school counselor as specified in Section 35300 is confidential. Any information of a personal nature disclosed to a school counselor by a parent or guardian of a pupil who is twelve years of age or older and who is in the process of receiving counseling from a school counselor as specified in Section 35300 is confidential. The information shall not become part of the pupil record, as defined in subdivision (b) of Section 49061, without the written consent of the person who disclosed the confidential information. The information shall not be revealed, released, discussed, or referred to, except as follows:

(a) Discussion with psychotherapists as defined by Section 1010 of the Evidence Code, other health care providers, or the school nurse, for the sole purpose of referring the pupil for treatment

(b) Reporting of child abuse or neglect as required by Article 2.5 (commencing with Section 11165) of Chapter 2 of Title 1 of Part 4 of the Penal Code

(c) Reporting information to the principal or parents of the pupil when the school counselor has reasonable cause to believe that disclosure is necessary to avert a clear and present danger to the health, safety, or welfare of the pupil or the following other persons living in the school community: adminstrators, teachers, school staff, parents, pupils, and other school community members

(d) Reporting information to the principal, other persons inside the school, as necessary, the parents of the pupil, and other persons outside the school when the pupil indicates that a crime, involving the likelihood of personal injury or significant or substantial property losses, will be or has been committed

(e) Reporting information to one or more persons specified in a written waiver after this written waiver of confidence is read and signed by the pupil and preserved in the pupil's file

*May not be "revealed, released, discussed, or referred to."

**If the counselor believes that disclosure to the parent would result in a clear and present danger to the health, safety, or welfare of the pupil, information shall not be disclosed.

9—75600

Notwithstanding the provisions of this section, a school counselor shall not disclose information deemed to be confidential pursuant to this section to the parents of the pupil when the school counselor has reasonable cause to believe that the disclosure would result in a clear and present danger to the health, safety, or welfare of the pupil.

Notwithstanding the provisions of this section, a school counselor shall disclose information deemed to be confidential pursuant to this section to law enforcement agencies when ordered to do so by order of a court of law, to aid in the investigation of a crime, or when ordered to testify in any administrative or judicial proceeding.

Nothing in this section shall be deemed to limit access to pupil records as provided in Section 49076.

3



Nothing in this section shall be deemed to limit the counselor from conferring with other school staff, as appropriate, regarding modification of the pupil's academic program.

It is the intent of the Legislature that counselors use the privilege of confidentiality under this section to assist the pupil whenever possible to communicate more effectively with parents, school staff, and others.

No person required by this section to keep information discussed during counseling confidential shall incur any civil or criminal liability as a result of keeping that information confidential.

As used in this section, "information of a personal nature" does not include routine objective information related to academic and career counseling.

# Informing Pupils, Parents, and Staff Members

The reasonable and prudent counselor would want to ensure that pupils, parents, and members of the school staff are familiar with the laws protecting counseling confidentiality *prior* to entering into a counseling relationship with them. Such notification can range from a statement in a student handbook to a written description of the law. The counselor may, in certain situations, want to ask the student to sign a statement confirming receipt of such information. Most often it will be included as a natural discussion early in the counseling sessions. Such a discussion could, for example, approximate the following:

> *Counselor to pupil:* "Trust is an important part of our relationship. Nothing that is discussed here will be told to anyone else except in certain situations when it might be required. I need to go over those areas with you now."

If the student handbook has a statement on the counseling relationship, the counselor could refer to the statement in the handbook and in that way emphasize the rather natural and perhaps less threatening aspects of such notification. A handbook statement might read as follows:

> School counselors are trained to help you with educational planning, career decisions, understanding test scores, and personal concerns. Certain information of a personal nature that you share with the counselor is confidential (private) and told to no one else without your permission. Some exceptions to this are that a counselor must report (1) child abuse; (2) child neglect; (3) sexual molestation; (4) planned, attempted, or perpetrated criminal activity; or (5) situations involving a clear and present danger to you. In addition, the counselor will have to testify or give information when ordered to do so by a court or when ordered to testify in any judicial or administrative hearing. Also, if the counselor makes a referral to a health care provider (psychiatrist, physician, psychologist, and the like), some information will be given. Such situations are rare. Be assured that California law generally requires the counselor to keep certain information confidential, unless one of the legal exceptions applies or you give written permission for the counselor to reveal such information.

Any communication of facts discussed during counseling while a third party, who is not necessary to advance the goals of counseling, is present could negate the confidential status. In such a situation protection would not exist.

Once the privilege has been established, only the counselee may waive the privilege. If the counselor reveals privileged information, the confidentiality status is not affected. However, *each* time the counselor repeats the privileged information to someone who is not included within the legal exception, both legal and ethical problems are created for the counselor and the person(s) with whom such information is shared.

# Sample Written Waiver Form

To whom it may concern: _____
Date

_____

_____

_____

This is to affirm that _____ has my permission to disclose information
Name of counselor

obtained from me during counseling that is felt to be pertinent to the matter(s) as specified below:

_____

_____

_____

_____

The pupil-counselor confidentiality laws have been fully explained to me: To further my counseling goals, the counselor may have to share this information with other individuals. Having been so informed, I grant permission to my counselor to share the above matter(s) with those person(s) identified below:

___ a. _____
Name of individual

___ b. _____
Name of health care provider

___ c. _____
Other persons the counselor feels to be necessary

Name of pupil _____ Signature _____

# Pupil/Counselor Confidentiality Quiz

Test yourself with these true/false questions. Place a T or F in the blanks provided. (All counselees are pupils who are at least age twelve or the parents of a pupil who is at least age twelve. Unless otherwise stated, no written authorization to release information is implied.)

A. A student reveals to the counselor (during counseling) that she believes she has venereal disease.

___ 1. The student's mother asks the counselor to find out if her daughter is pregnant. The counselor may tell the parent what the daughter has revealed.

___ 2. The counselor may contact the child's physician to arrange a referral for treatment.

___ 3. The counselor may ask the nurse to do a follow-up with the girl.

B. A student reveals to the counselor (during counseling) that he is going to "blow up the principal's house."

___ 4. The counselor may inform the principal of the threat.

___ 5. The counselor may inform the police of the threat.

___ 6. The counselor may inform the student's parents of the threat.

C. Pupil X, who is a reputed drug user, has weekly counseling sessions with the school counselor.

___ 7. The counselor may reveal confidential information upon request of the building principal.

___ 8. The counselor may reveal confidential information to the police without a court order.

___ 9. The counselor may reveal confidential information to another counselee who asks about pupil X.

D. A student discusses concerns about SAT scores and grade-point average with the counselor.

___ 10. The counselor may discuss the scores and grade-point average with teachers.

___ 11. The counselor may discuss the scores with a requesting potential employer.

E. A seventeen-year-old counselee reveals to the school counselor that she has had sexual relations with another student.

___ 12. The counselor may report that information to law enforcement and child protection service agencies.

___ 13. The counselor may report the information to the girl's parents.

___ 14. The counselor may report the information to the school nurse.

F. A pupil gives written authorization for the counselor to reveal information discussed in a counseling interview. Such disclosure specifies another pupil as the authorized recipient of the confidential information.

___ 15. If the counselor retains a written copy of the waiver in other than the counselor's personal file, it becomes a part of the pupil's record and is available to the pupil's parents.

___ 16. Whether or not the counselor retains a record of the information released, the information maintains its status of confidentiality.

G. A teacher who has a counseling credential "counsels" with a student.

___ 17. The teacher may invoke the confidentiality provisions of Education Code Section 35301.

# Answers to the Confidentiality Quiz

1. False—depending upon what other factors affected by law are brought to light. See Civil Code Section 34.7 and Education Code sections 35301 and 72621. The counselor must consider the health, safety, and welfare of the pupil.
2. True. Discussion with a health care provider for the purpose of referring the pupil for treatment is permitted.
3. True. The law allows the counselor to contact the school nurse for the sole purpose of referring the pupil for purposes of treatment.
4. True. The counselor must inform the principal under California case law. See Case 9 in the examples of cases following this quiz.
5. True. The counselor must inform the police of the threat. See Education Code sections 35301(d) or 72621(d).
6. True. The counselor may inform the parents, unless disclosure would result in clear and present danger to the health, safety, or welfare of the pupil.
7. False—unless the elements of "crime . . . personal injury or significant or substantial property loss" are deemed by the counselor to exist or the health, safety, or welfare of the pupil or others is in clear and present danger. See Education Code sections 35301(c) and (d).
8. False—unless as above with regard to criminal elements.
9. False.
10. True. The scores can be discussed with teachers who have a legitimate educational interest, *but the pupil's concerns cannot be discussed.* The SAT score and grade-point average are from the pupil's record. The scope of this confidentiality law does not include test scores. (Note, however, that the counselor is not prohibited from "*conferring* with other school staff, as appropriate, regarding modification of the pupil's academic program.")
11. False. A potential employer may have access to directory information only.
12. False—unless the conduct could be defined as a sexual assault in accordance with Penal Code Section 11165, as amended by Chapter 29, Statutes 1981. See the appendix.
13. False—unless notification is necessary to avert clear and present danger to the counselee. See Education Code Section 35301(d).
14. False—unless the pupil is being referred for treatment.
15. True. Parents have access to the pupil's record.
16. True. The counselor, however, must avoid placing the information in the pupil's cumulative record. Otherwise, the counselor could be liable for breach of confidentiality. This occurs inasmuch as pupil records are accessible to eligible parents and persons having legitimate educational interests. See Education Code Section 49076.
17. False. Only employees who hold a credential authorizing counseling *and* who are assigned counseling duties may invoke confidentiality.

# Examples of Cases Involving Legal and/or Ethical Factors in Pupil/Counselor Confidentiality

*NOTE:* In the cases presented in this section, the pupil is at least twelve years of age. Unless otherwise stated, the information does not qualify for the permitted exceptions to confidentiality. Exceptions are as follows (See Education Code Section 35301 for full statements.):

1. Referral to a health care provider; e.g., for medical or psychological treatment
2. Reporting of child abuse
3. Clear and present danger to pupil or others
4. Significant or substantial crime
5. Written waiver
6. Court order
7. Modification of academic program

The counselor has the right to limit and should limit the scope of the communication (in re *Lipshutz*, 2 Cal 3d 415; see page 20.)

*Case 1. A parent or a school staff member asks a counselor to reveal information obtained in a counseling session.*

The information may not be revealed. If it is, the counselor might be held liable for breach of the confidentiality privilege. This prohibition means that the counselor may not reveal confidential information at staff meetings, case study hearings, or special education committee meetings. If an exception applies, however, the counselor is allowed to and should limit the scope of the communication. (See Case 7.)

*Case 2. A counselor voluntarily reveals information to a supervisor. The information is obtained in a counseling interview.*

The counselor is in violation of the law and the professional code of ethics. An action for breach of the confidentiality privilege conceivably could be brought against the counselor by the pupil. (See cases 7 and 9.)

*Case 3. During a counseling session the counselee reports hearsay information which alleges illegal activities of another pupil.*

A difficult issue. The confidentiality statute only protects the counselee. Professional ethics and the responsibility of a certificated employee come into play with regard to other students. (See Education Code Section 44807.) From a legal standpoint the information regarding the other pupil is hearsay, which is generally inadmissible as evidence in a court of law but is sometimes allowed in a hearing. A counselor will have to consider all of these factors and act accordingly.

*Case 4. A pupil's parents request confidentiality for their counseling session with a school counselor.*

Confidentiality is a right of the parent or guardian of a pupil who is twelve years of age or older.

*Case 5. During a counseling session a pupil reveals information that leads the counselor reasonably to suspect the pupil to have been a victim of child abuse.*

In this case the counselor would be obliged to report suspected child abuse to a child protective agency (police or sheriff's department, county probation department, or a county welfare department) irrespective of the age of the pupil. The report must be made immediately or as soon as practically possible by telephone. Within 36 hours of the telephone report, the counselor would be obliged to prepare and to send to the child protective agency a written report of information concerning the incident. "Reasonable suspicion" in this case means that objectively reasonable suspicion which another person holding a similar professional position could conclude. (See Penal Code Section 11165 as amended by Chapter 29, Statutes 1981; and Penal Code Section 11166 as amended by Chapter 1071, Statutes 1980.)

*Case 6. A counselor conducts a counseling interview in a setting where the conversation can be easily heard by waiting students and/or staff.*

Legally, the confidentiality status is altered only if the counselee is aware of the presence of others and agrees to such participation. In other words, the confidentiality privilege does not apply if the pupil is aware of and agrees to the participation of others.

*Case 7. A pupil reveals information that must be disclosed to local law enforcement officials. The pupil was not provided an initial statement regarding those areas for which confidentiality could not be provided.*

This is a difficult issue. The legal mandate is that the report must be made. The ethical consideration is that the pupil should have been told of the limits to confidentiality. Yet, the counselor has no choice but is legally bound to follow through on the report. Because the nature of the communication involved some type of criminal conduct, the confidentiality privilege would not apply.

If an exception applies and it is necessary to report the information, the counselor should limit the scope of the communication to only those matters directly relevant to the criminal conduct not protected by the privilege (in re *Lipshutz*, 2 Cal 3d 415). Further, ethics would require that the information not be revealed to unnecessary parties. See Case 9 for a discussion of other legal duties that could come into play.

*Case 8. A classroom teacher who also holds a counseling credential provides personal counseling to pupils. A supervisor asks the teacher to reveal information gained from a counseling session.*

The teacher may not invoke the confidentiality provisions of Education Code sections 35301 and 72621. Education Code Section 35300 limits the application to school counselors "assigned specific times to directly counsel pupils . . . " Student advisement in an organized advisement program may be provided by other than a counselor but it is not defined as counseling.

*Case 9. In the course of a counseling session, a pupil informs the counselor that he is "high" on marijuana. He asks the counselor not to let the industrial arts teacher know of his condition. The counselor is concerned that the pupil's condition could present a safety hazard in the industrial arts class, but is also sensitive to a breach of the confidentiality requested by the pupil.*

The pupil, by having informed the counselor that he is "high" on marijuana, has admitted he is *using* a drug. Health and Safety Code Section 11550 makes use of certain drugs a crime. This case may also involve possession of a drug. (See Health and Safety Code sections 11357 and 11364.) However, marijuana is not such a drug. See Health and Safety Code sections 11054 and 11055 to learn which drugs, when used, constitute a crime. Penal Code Section 647, however, specifies that anyone found in a public place in such a condition that he or she is unable to exercise care for his or her own safety or the safety of others is displaying criminal conduct in a disorderly manner. If a pupil is manifesting such behavior, then the confidentiality privilege does not apply; and if in fact a crime is being committed, there may even be a question of a counselor aiding and abetting the criminal activity if the pupil's behavior is not reported to the proper authorities. (See Penal Code Section 31.)

Further, the counselor as well as other school employees, has a responsibility to oversee the safety of all pupils, including the pupil being counseled. When applied to the hypothetical situation, Education Code Section 44807 supersedes the confidentiality statute. Thus, the industrial arts teacher *must* be informed so as to protect the pupil from injury. Counselors have been found liable and thus responsible to potential victims of the person being counseled.[4] In addition, if the pupil is in need of *immediate* health care treatment, it should be sought. Otherwise, the pupil's safety is again at stake. The counselor will have to make a determination of the conduct based on more facts than are present in the hypothetical case. Again, if the situation indicates that criminal conduct could occur, then the counselor has a duty to report the matter to other persons. *NOTE:* Criminal conduct is also the basis for civil liability. Therefore, if criminal conduct is present, then the parents, too, should be notified, inasmuch as parents are civilly liable for the actions of a minor child.

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[4] *Tarasoff* v. *Regents of University of California*, 17 Cal 3d 425.

# Ethical Principles of Confidentiality[5]

It is the professional responsibility of school counselors to respect fully the right to privacy of those pupils with whom they enter into a counseling relationship. This is because such a relationship requires an atmosphere of trust and confidence between the pupil and the counselor. Education Code sections 35301 and 72621 provide the pupil with the right to privacy as understood within the pupil-counselor confidentiality privilege. The use of confidentiality ensures that disclosures made will not be divulged to others except when authorized by the pupil or as required by the new laws.

Counseling information used in research and training of counselors should fully guarantee anonymity of the pupil. In the event of possible judicial or administrative proceedings, the counselor should advise the school administration as well as the counselee, if available. Where necessary, legal advice should be sought. In cases in which reports are required to be issued, every effort should be made to limit demands for information to only those matters essential for the purposes of the legal proceedings. This view is supported by actual case law. (See Case 7 in the preceding section.)

The pupil-counselor relationship should be governed by the following principles:

- The main purpose of confidentiality is to offer pupils a relationship where they will be able to deal with what concerns them without fear of disclosure.
- In reality, it is the pupil who is privileged. The information belongs to the pupil, and the pupil generally has a right to say who may or may not have access to the information.
- The counselor and the pupil must be provided with adequate physical facilities that guarantee the confidentiality of the counseling relationship.
- All faculty and administrative personnel should receive in-service training relative to the privacy rights of pupils. Counselors should assume primary responsibility for educating school personnel in this area.
- Counselors should not discuss confidential matters over the telephone. A counselor should insist that a request for such information be made in writing on official stationery and with the written consent (i.e., waiver) of the pupil.
- Counselors should remain aware that it is much more difficult to ensure confidentiality in group counseling than in individual counseling.
- When a counselor is in doubt as to what information should be part of the testimony or released as evidence in a judicial proceeding, the counselor should seek legal advice and/or arrange a conference with the judge or hearing officer to explain the counselor's dilemma.
- Counselors have a responsibility to encourage and help school districts to develop written policies concerning the ethical handling of all records in their system. Counselors and school administrators are encouraged to develop additional guidelines relevant to local situations.

[5]Portions of this section are based on a position statement issued by the American School Counselor Association Governing Board in 1974.

# Definitions

*Administrative hearing.* An oral proceeding before an administrative agency consisting of argument or trial or both. Procedural rules are more relaxed at such hearings as contrasted with civil or criminal trials. See also *Hearing.*

*Advisement.* A supplement to the school counseling program. Advisement consists of organized activities delivered by trained advisers under the supervision of a credentialed school counselor. Because advisers are not credentialed or employed as school counselors, they are not covered by the law.

*Child abuse.* Physical injury which is inflicted by other than accidental means on a child (a person under the age of eighteen years) by another person. Child abuse also means the sexual assault or molestation of a child or any act of willful cruelty, unjustifiable punishment, corporal punishment, or injury as set out in law. (See Penal Code Section 11165 as amended by Chapter 29, Statutes 1981.[6])

*Confidential.* Entrusted with the confidence of another or with his or her secret affairs or purposes; intended to be held in confidence or kept secret; done in confidence.

*Confidential communication.* A confidential communication is a statement made under circumstances that clearly show the speaker intended the statement only for the ears of the person addressed; thus, if the communication is made to the counselor in the presence of a third party whose presence is not reasonably necessary in order to achieve the pupil's counseling goals, the communication is not protected. Examples of a confidential relationship recognized by law are those between spouses and between attorneys and clients. (See note at end of this section.)

*Confidentiality.* The quality or state of being confidential; something treated as private and not for publication. Within the context of this legislation, confidentiality is vested in the pupil, not the counselor. That is, the pupil is the holder of the right of confidentiality, and the counselor may not breach the confidentiality without the pupil's consent unless one of the exceptions applies. [See Chapter 401, Statutes 1980 (AB 763); and Chapter 1152, Statutes 1981 (AB 428).]

*Counseling.* The application of counseling principles and methods by a "clinically trained" school counselor. It is a therapeutic and growth process through which individual students or groups of students are helped to (1) define goals; (2) plan and implement decisions; and (3) solve problems related to educational, career, and personal-social development.

Education Code Section 35300 specifies that "educational counseling, career counseling, personal counseling, evaluating and interpreting test data, and counseling and consulting with parents" must be done by a school counselor who possesses a valid credential and who is assigned specific times for counseling.

*Health care provider.*[7] A licensed agency such as a hospital outpatient clinic, a community mental health clinic, a family service agency, or a private psychiatric clinic. Examples of individual health care providers would be those persons identified in Evidence Code Section 1010 as psychotherapist. This section defines a psychotherapist as an individual who is:

1. Authorized to practice medicine in California
2. Licensed as a psychologist under Chapter 6.6 of Division 2 of the Business and Professions Code (Section 2902)
3. Licensed as a clinical social worker under Article 4 of Chapter 17 of Division 3 of the Business and Professions Code (sections 9040 through 9042) when engaged in applied psychotherapy of a nonmedical nature
4. Credentialed and serving as a school psychologist
5. Licensed as a marriage, family, and child counselor under Chapter 4 of Part 3, Division 5, of the Business and Professions Code

*Hearing.* A formal proceeding (though generally less formal than a trial) that is generally public, with definite issues of fact or of law to be tried. Witnesses are heard, and the parties proceeded against have a right to be heard. It is much the same as a trial and may end in a final decision. The procedures for introducing and admitting evidence usually are more relaxed in a hearing than in a civil or criminal trial.

An *adversary* hearing exists when both parties are present at the hearing to argue for their respective positions. An *ex parte* hearing exists when only one party is present at the hearing.

[6] All code sections referenced in this handbook are California code sections.

[7] The legal definitions of "health care provider" are given in Health and Safety Code Section 1345(h) and Code of Civil Procedure Section 340.5.

*Hearsay.* Evidence that is based on something the witness has heard someone else say rather than on what the witness has himself or herself seen or experienced. Hearsay usually is inadmissible as testimony.

*Informed consent.* A person's agreement to allow something to happen that is based on a full disclosure and presumed understanding of facts needed to make a decision intelligently; i.e., knowledge of risks involved, alternatives available, and so forth.

*Judicial.* Belonging to the office of a judge, as judicial authority; relating to or connected with the administration of justice, as a judicial officer; having the character of judgment or formal legal procedure, as a judical act; proceeding from a court of justice, as a judicial writ; a judicial determination; involving the exercise of judgment or discretion.

*Pupil.* For purposes of this document, a person twelve years of age or older enrolled in school. The age of twelve was selected because that age group is an acknowledged age group in both the Civil and Health and Safety Codes in relation to such matters as counseling, medical care, and rape.

*NOTE:* Assembly Bill 763 as amended by AB 428 is applying confidential status "to any information of a personal nature disclosed . . . in the process of receiving counseling." One of the most important elements of "confidentiality" is that the individual disclosing information *intended* the matter(s) to be confidential in the framework of the relationship. Here the intent is *presumed,* unless the facts indicate a contrary intent. Therefore, counselors should remain sensitive to the need to use waivers of confidentiality whenever any information resulting from a counseling session which is not an exception, as identified in Education Code Section 35301, is disclosed.

## Other Publications Available from the Department of Education

*A Handbook Regarding Confidentiality as a Right of Pupils in Counselor-Pupil Exchanges* is one of approximately 500 publications that are available from the California State Department of Education. Some of the more recent publications or those most widely used are the following:

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| Accounting Procedures for Student Organizations (1979) | $1.50 |
| Bilingual Program, Policy, and Assessment Issues (1980) | 3.25 |
| California Private School Directory | 5.00 |
| California Public School Directory | 12.50 |
| California Public Schools Selected Statistics | 1.50 |
| California School Accounting Manual (1981) | 2.50 |
| California Schools Beyond Serrano (1979) | .85 |
| California's Demonstration Programs in Reading and Mathematics (1980) | 2.00 |
| Discussion Guide for the California School Improvement Program (1978) | 1.50*† |
| District Master Plan for School Improvement (1979) | 1.50* |
| Education of Gifted and Talented Pupils (1979) | 2.50 |
| Establishing School Site Councils: The California School Improvement Program (1977) | 1.50*† |
| Foreign Language Framework for California Public Schools (1980) | 2.50 |
| Guide to School and Community Action (1981) | 1.75 |
| Guidelines and Procedures for Meeting the Specialized Health Care Needs of Students (1980) | 2.50 |
| Guidelines for Developing Comprehensive Guidance Programs in California Schools (1981) | 2.00 |
| Guidelines for School-Based Alcohol and Drug Abuse Programs (1981) | 1.00 |
| Handbook for Planning an Effective Reading Program (1979) | 1.50* |
| Handbook for Planning an Effective Writing Program (1982) | 2.00* |
| Handbook Regarding the Privacy and Disclosure of Pupil Records (1978) | .85 |
| History—Social Science Framework for California Public Schools (1981) | 2.25 |
| Improving the Human Environment of Schools (1979) | 2.50 |
| Instructional Materials Approved for Legal Compliance (1981) | 3.50 |
| Interim Guidelines for Evaluation of Instructional Materials with Respect to Social Content (1981) | 1.50 |
| Manual of First Aid Practices for School Bus Drivers (1980) | 1.25 |
| Mathematics Framework for California Public Schools, with 1980 Addendum (1982) | 2.00 |
| Monograph on Staff Development (1980) | 1.50 |
| New Era in Special Education: California's Master Plan in Action (1980) | 2.00 |
| Pedestrian Rules of the Road in California—Primary Edition (1980) | 1.50 |
| Physical Performance Test for California, Revised Edition (1981) | 1.50 |
| Planning for Multicultural Education as a Part of School Improvement (1979) | 1.25* |
| Planning Handbook (1978) | 1.50* |
| Proficiency Assessment in California: A Status Report (1980) | 2.00 |
| Proficiency Skill Development Kit (1980) | 7.50 |
| Putting It Together with Parents (1979) | .85† |
| Reading Framework for California Public Schools (1980) | 1.75 |
| Relationship Between Nutrition and Student Achievement, Behavior, and Health (1980) | 4.00 |
| Science Education for the 1980s (1982) | 2.00* |
| Science Framework for California Public Schools (1978) | 1.65 |
| School Improvement: Making California Education Better (brochure) (1982) | NC* |
| Student Achievement in California Schools | 1.75 |
| Students' Rights and Responsibilities Handbook (1980) | 1.50† |
| Teaching About Sexually Transmitted Diseases (1980) | 1.65 |
| Toward More Human Schools (1981) | 1.75 |
| Visual and Performing Arts Education Framework for California Public Schools (1982) | 3.25 |

Orders should be directed to:

California State Department of Education
P.O. Box 271
Sacramento, CA 95802

Remittance or purchase order must accompany order. Purchase orders without checks are accepted only from government agencies in California. Sales tax should be added to all orders from California purchasers.

A complete list of publications available from the Department may be obtained by writing to the address listed above.

*Developed for implementation of School Improvement.
†Also available in Spanish, at the price indicated.